

1 RENE L. VALLADARES
Federal Public Defender
2 Nevada State Bar No. 11479
BREND A WEKSLER
3 Assistant Federal Public Defender
Nevada State Bar No. 8124
4 RYAN NORWOOD
Assistant Federal Public Defender
5 411 E. Bonneville, Ste. 250
Las Vegas, Nevada 89101
6 (702) 388-6577/Phone
(702) 388-6261/Fax
7 Ryan_Norwood@fd.org
8 Attorney for Ryan W. Payne

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10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 UNITED STATES OF AMERICA,
13 Plaintiff,
14 v.
15 RYAN W. PAYNE,
16 Defendant.

Case No. 2:16-cr-046-GMN-PAL

MOTION FOR RELIEF IN LIGHT OF
GOVERNMENT'S REQUESTED
EXTENSION TO RESPOND TO ECF
2727

(Expedited Treatment Requested)

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18 **Certification:** This Motion is timely filed.

19 COMES NOW defendant, Ryan W. Payne, by and through his counsel of record, Ryan
20 Norwood and Brenda Weksler, Assistant Federal Public Defenders, and hereby moves this
21 honorable court for relief based upon an extension sought by the government to respond to
22 Payne's sealed motion, ECF 2727. The motion is based on the points and authorities set forth
23 below:
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1 **POINTS AND AUTHORITIES**

2 At the end of the hearing held on October 25, 2017, and as the Court was leaving the
3 bench, the government's lawyers suddenly demanded a 60-day extension for their response to
4 a sealed motion (ECF 2727) that Payne had filed the previous week, and which was due on
5 November 1. After a quick discussion, the Court stated it would allow an extension of over 30
6 days, until December of 2017.

7 The motion at issue raises a number of *Giglio/Brady* issues based upon information
8 from the extensive attachments to the two Office of Inspector General (OIG) reports concerning
9 SAC Daniel Love, the incident commander of the 2014 cattle gathering operation at the center
10 of this case.¹ Pursuant to this Court's October 3 order, the government provided these
11 attachments to the defense on October 10, eight days before the filing of the motion. The motion
12 seeks dismissal of the case, and in the alternative, makes a number of discovery requests based
13 on information provided in these materials.

14 The motion is less than 30 pages and within the page limit of the local rules. The
15 "thousand" pages complained of by the government refers to the motion's *exhibits*, which
16 consists of the OIG attachments cited to and quoted from in the Motion. Payne's counsel
17 deemed it important to provide these attachments in light of the government's continuing
18 minimizations of the incident commander's "misconduct." Even during this week's hearing,
19 for example, the government's counsel referred to the allegations as "innuendo," and suggested
20 that the conclusions reached by the OIG reports were incorrect. The attachments show that the
21 evidence of the incident commander's misconduct is serious, extensive, well-documented by
22 credible sources, and (most importantly for purposes of this case) relevant to the 2014 cattle
23 gathering operation that he planned and ran.

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¹ Because the motion and attachments are sealed, this pleading is confined to a general discussion of the relief sought in the motion.

1 There was no good reason for the government to seek a 60 or even a 30-day extension
2 to respond to this motion. The U.S. Attorney has had all of the documents cited and attached
3 in this motion for at least as long as the defense, and apparently some of it for much longer.
4 The U.S. Attorney has four attorneys assigned to this case, which they have already tried twice
5 before. This complex trial places substantial burdens on all of the parties involved and often
6 requires them to review evidence and address issues on short notice.

7 Just this week, for example, the defense received *hundreds* of pages of new discovery
8 from the government, much of it statements and law enforcement interviews that were written
9 years ago, and which pertain to witnesses that the government would seek to call at this trial.
10 There is no good reason why this material – all of which is subject to a protective order insisted
11 upon by the government – should not have been provided a long time ago. The government
12 may contend the timing of its disclosure is permitted by the rules and the Court's orders. But
13 if the defense, which doesn't have the government's extensive resources, is expected to review
14 and adjust its trial strategy to such disclosures on the fly, then the government isn't in any
15 position to request lengthy extensions to respond to a motion that is based on materials the
16 government already had, and which was filed promptly after the defense finally obtained these
17 materials.

18 To the extent the government's requested extension was based on their displeasure with
19 the Court's decision to hear additional testimony on November 3, 2017 regarding the evidence
20 destruction issue, there was no need to extend their deadline until December to accommodate
21 whatever inconvenience this hearing will cause them. The government's claimed
22 inconvenience, in any event, appears to be somewhat overstated given that they are not calling,
23 and in some cases not even questioning, witnesses at this hearing.

24 The effect of the government's requested extension would be that most of the
25 government's case would be presented before the Court could address the motion. This would
26 result in wasting weeks or months of the Court and jury's time if the Court determined the case
should be dismissed. Even if the Court were to rule that dismissal were not the appropriate

1 sanction, the discovery sought as alternative relief would be effectively useless to the defense
2 if it were not granted until the end of trial.

3 Payne would accordingly ask the Court to do the following (and understands that the
4 Court may have ruled on the first two requests in the context of the brief October 25 discussion):

- 5 (1) Continue the trial so the motion may be litigated and order release hearings for the
6 defendants (as requested in the ECF 2727 itself).
- 7 (2) Alternatively, shorten the government's response deadline to no less than a week
8 after the original deadline on November 1, 2017, and then expedite the resolution of
9 that motion.
- 10 (3) Appoint an independent special discovery master, pursuant to the authority cited in
11 Payne's prior motion (ECF 2159), who will be empowered to obtain, review, and
12 resolve disputes regarding the discovery material sought in ECF 2727. This
13 appointment will address the government's apparent concern that reviewing
14 government materials for *Brady/Giglio* evidence poses an unfair burden on them.
- 15 (4) Until the sealed motion at ECF 2727 is resolved, bar the government from presenting
16 the following evidence in its case-in-chief:
 - 17 (a) Government witnesses named in the OIG attachments (listed in sealed
18 attachment A).
 - 19 (b) Any testimony related by other witnesses about information conveyed by the
20 Incident Commander regarding the cattle gathering operation (for example,
21 information about threats, planning, or orders conveyed to and through
22 subordinate officers), whether introduced for the truth of the matter asserted
23 therein or for some other purpose.
 - 24 (c) Government witnesses for whom the government has provided "new"
25 discovery following the filing of ECF 2727 (listed in sealed attachment A).

1 Payne would in any event reserve the right to raise issues regarding potential
2 government evidence that implicates the concerns raised in ECF 2727, as they arise throughout
3 the trial.

4 **CONCLUSION**

5 For all the above reasons, and the reasons stated in ECF 2727 and other pleadings, Payne
6 would request the Court consider and grant the relief described above.

7 DATED this 27th day of October, 2017.

8 Respectfully submitted,
9 RENE L. VALLADARES
Federal Public Defender

10 By: /s/ Brenda Weksler

11 BRENDA WEKSLER
Assistant Federal Public Defender
12 Attorney for Ryan W. Payne

13 By: /s/ Ryan Norwood

14 RYAN NORWOOD
Assistant Federal Public Defender
15 Attorney for Ryan W. Payne
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CERTIFICATE OF ELECTRONIC SERVICE

The undersigned hereby certifies that she is an employee of the Federal Public Defender for the District of Nevada and is a person of such age and discretion as to be competent to serve papers.

That on October 27, 2017, she served an electronic copy of the above and foregoing **MOTION FOR PERMISSION TO ALLOW WITNESS DAN LOVE TO APPEAR VIA MOTION FOR RELIEF IN LIGHT OF GOVERNMENT'S REQUESTED EXTENSION TO RESPOND TO ECF 2727** by electronic service (ECF) to the person named below:

STEVEN W. MYHRE
Acting United States Attorney
ERIN M. CREEGAN
Assistant United States Attorney
NADIA JANJUA AHMEN
Assistant United States Attorney
DAN SCHIESS
Assistant United States Attorney
501 Las Vegas Blvd. South
Suite 1100
Las Vegas, NV 89101

/s/ Lauren Conklin
Employee of the Federal Public Defender